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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,967	09/11/2003	Duane G. Krzysik	KCC 4982.1 (K-C 19,834)	5034
321	7590	04/24/2006	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			VANIK, DAVID L	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/659,967		KRZYSIK ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	David L. Vanik		1615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13, 15-23, 25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-23, 25 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/21/2006</u> | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Receipt is acknowledged of the Applicants' Amended Claims, Remarks, and Request for Continued Examination filed on 2/21/2006. Receipt is also acknowledged of Applicants' Information Disclosure filed on 3/21/2006.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-13, 15-18, 21, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0497144('144) in view of US 6,340,467 ('467) and further in view of US 4,925,653 ('653).

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'144 teach cosmetic compositions comprising (1) a particulate styrene-ethylene-propylene copolymer, (2) an emollient, and (3) a pigment or sun blocking agent (abstract). According to '144, the styrene-ethylene-propylene copolymer may be present in an amount between 0.5% to 90% by weight, the emollient may be present in an amount between 10% to 70% by weight, and the colorant particles may be present in an amount between 5% to 50% by weight (page 3, line 43 – page 4, line 11). As set forth in Example 2, the styrene-ethylene-propylene copolymer may be admixed with isododecane, the colorant may be iron oxide, the sunscreen may be Titanium Dioxide, the texture modifier may be talc, and the emollient may be Isotetracoane or Isododecane. Numerous other emollients, such as mineral oil, can also be used in the cosmetic composition advanced by '144 (page 2, line 55 – page 3, line 7). Additionally, based on the disclosure of '653, one would have the requisite motivation to add polyisobutylene to the cosmetic composition advanced by '144. According to '653, the addition of polyisobutylene to a skin care composition has the advantage of protecting human epidermis against UV radiation (column 1, lines 12-17).

Although '144 teaches that mixtures of emollients (such as mineral oil with a structurant – isoparaffins) can be used in the cosmetic composition, '144 does not specifically teach the same structurants as set forth in the instant claim set.

However, '467 teaches a composition comprising from about 5 – 75% weight percent of an emollient, about 0.1 to 50% by weight percent of a wax, and up to 50%

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weight percent of a rheology enhancer (Claims 1 and 13; abstract; column 2, lines 46-54; column 2, lines 37-41; and column 4, lines 34-42). According to '467, mineral oil is a suitable emollient (column 2, lines 24-36), carnauba wax is a suitable structurant (column 4, lines 34-43), and a combination of mineral oil and styrene copolymers is a well-suited viscosity enhancer (column 3, lines 3-62 and column 4, lines 63-67).

Because, according to '467, the addition of between 0.1 to 50% by weight of wax, such as carnauba wax or beeswax, can modulate the melting point and softening point of a cosmetic-based composition, one of ordinary skill in the art would have been motivated to add between 0.1 to 50% of carnauba wax or beeswax to the composition advanced by '144. Based on the teaching of '467, there is a reasonable expectation that the addition of a wax, such as carnauba wax or beeswax, would effectively modulate the melting point and softening point of a cosmetic-based composition, resulting in a composition suitable for dispersion to consumers. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a suitable wax, such as carnauba wax or beeswax, to the cosmetic-based composition advanced by '144 in view of the teachings of '467.

Claims 1-13, 15-23, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,149,934 ('934) in view of EP 0497144 ('144).

'934 teaches a composition comprising from about 5 – 95 weight percent of an emollient, about 5 – 95 weight percent of a wax, and about 0.1 – 25 weight percent of a

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viscosity enhancer (abstract and column 2, lines 10-37). According to '934, mineral oil is a suitable emollient (column 9, line 47) and beeswax is a suitable structurant (column 10, line 22). Like the instant claims 7-9, the viscosity of the composition advanced by '934 is between about 50 – 50,000 centipose (column 12, lines 42-53). The composition set forth by '934 can also comprise a variety of other chemical agents, such as antifoaming agents and fragrances (column 11, lines 24-60).

The composition advanced by '934 can also comprise a surfactant, such as sorbitan monooleate, and a hydrophilic skin care active, such as glycerin (column 11, line 16; column 11, lines 59-60; and column 9, lines 21-22). In another embodiment, the composition can include 20 – 75 weight percent of a particulate material, such as calcium carbonate (column 7, lines 3-17).

'934 does not specifically teach a rheology enhancer selected from the list set forth in the instant Claims 1 and 23. However, '144 teaches the advantages of using rheology enhancers comprising styrene-ethylene-propylene copolymers admixed with Isododecane in a cosmetic compositions (Example 2 and page 2, lines 33-26). According to '144, cosmetic compositions comprising styrene-ethylene-propylene copolymers are effective substrates suitable for transfer and spreading on skin in a smooth fashion (page 2, lines 33-36). Moreover, another advantage of using styrene-ethylene-propylene copolymers in a cosmetic composition is that they render said composition relatively transferproof, meaning that said composition will not flake-off the skin after application (page 2, line 33-36). Since the addition of styrene-ethylene-propylene copolymers to a cosmetic composition render said composition relatively

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transferproof, meaning that said composition will not flake-off the skin after application, one of ordinary skill in the art would have been motivated to add styrene-ethylene-propylene copolymers admixed with Isododecane to the ointment composition proposed by '934. Based on the teachings of '144, there is a reasonable expectation that a topical ointment comprising styrene-ethylene-propylene copolymers would result in a composition that is relatively transferproof, meaning that said composition will not flake-off the skin after application. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add styrene-ethylene-propylene copolymers admixed with Isododecane to the cosmetic composition advanced by '934 in view of the teachings of '144.

Claims 1-6, 10-13, 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,287,581 ('581) in view of EP 0497144('144).

'581 disclose a composition comprising 5 – 95 weight percent of emollients, 5 – 95 percent wax, a structurant, 1 – 25 weight percent of a viscosity enhancer, humectants, and 1 – 20 weight percent of a surfactant (abstract, column 3, lines 32-39, column 5, lines 18-32, and Claim 1). Specific components used in the invention advanced by '581 include: montan wax, a well known structurant (column 5, line 13); canola oil, a suitable emollient (column 4, line 47); ethylene/vinyl acetate copolymers, a viscosity enhancer (column 5, lines 16-17); sorbitan monooleate, a surfactant having an HLB in the range of 3 to 6 (column 5, lines 1-2, column 7, lines 4-15); glycerin, a

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hydrophilic skin care active (column 5, line 7). The composition set forth by '581 can also comprise a variety of other chemical agents, such as antifoaming agents and fragrances (column 12, lines 11-44).

'581 does not specifically teach a rheology enhancer selected from the list set forth in the instant Claims 1 and 23. However, '144 teaches the advantages of using rheology enhancers comprising styrene-ethylene-propylene copolymers admixed with Isododecane in a cosmetic compositions (Example 2 and page 2, lines 33-26). According to '144, cosmetic compositions comprising styrene-ethylene-propylene copolymers are effective substrates suitable for transfer and spreading on skin in a smooth fashion (page 2, lines 33-36). Moreover, another advantage of using styrene-ethylene-propylene copolymers in a cosmetic composition is that they render said composition relatively transferproof, meaning that said composition will not flake-off the skin after application (page 2, line 33-36). Since the addition of styrene-ethylene-propylene copolymers to a cosmetic composition render said composition relatively transferproof, meaning that said composition will not flake-off the skin after application, one of ordinary skill in the art would have been motivated to add styrene-ethylene-propylene copolymers admixed with Isododecane to the ointment composition proposed by '581. Based on the teachings of '144, there is a reasonable expectation that a topical ointment comprising styrene-ethylene-propylene copolymers would result in a composition that is relatively transferproof, meaning that said composition will not flake-off the skin after application. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add styrene-ethylene-propylene

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copolymers admixed with Isododecane to the cosmetic composition advanced by '581 in view of the teachings of '144.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

### ***Correspondence***

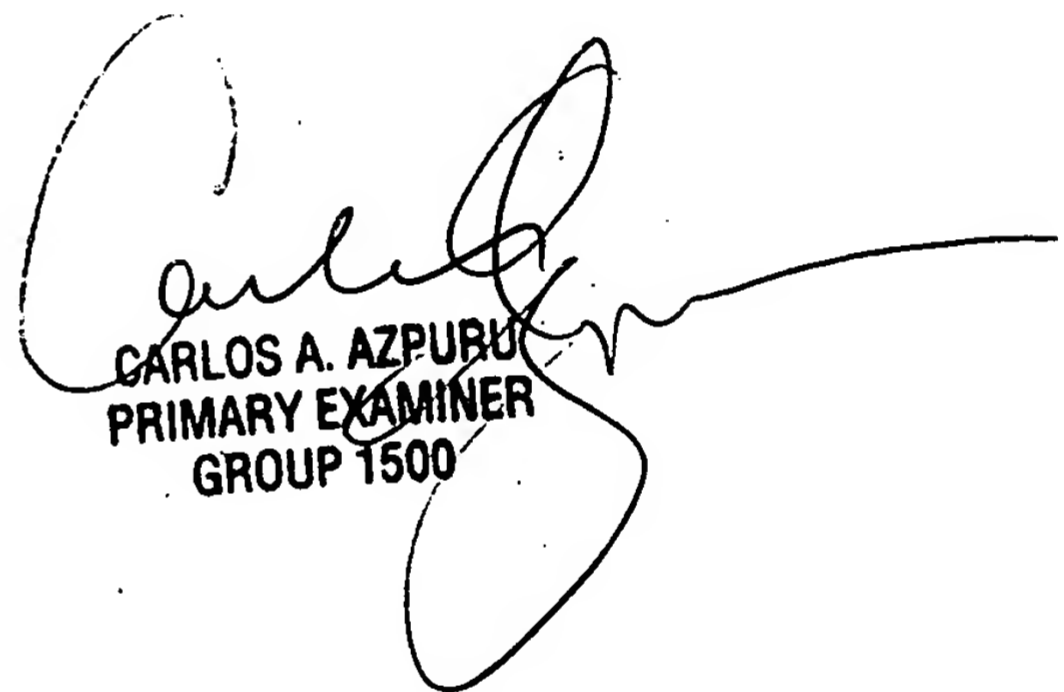
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Vanik, Ph.D.  
Art Unit 1615

  
4/19/06  
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